

## MAINE STATE BOARD OF OSTEOPATHIC LICENSURE

IN RE: Licensure Disciplinary Action                    )  
Charles Sullivan, D.O.                                    ) FINAL DECISION AND ORDER

### **I.                                    PROCEDURAL HISTORY**

Pursuant to the authority found in 32 M.R.S. § 2591-A, *et seq.*, 5 M.R.S. § 9051, *et seq.* and 10 M.R.S. § 8001, *et seq.*, the Board of Osteopathic Licensure (Board) met in public session at the Board's offices located in Augusta, Maine on December 9, 2010 and March 10, 2011 for the purpose of conducting an adjudicatory hearing to determine whether Dr. Charles Sullivan violated certain Board statutes and Rules as alleged in the Notice of Hearing (Complaint).

A quorum of the Board was in attendance during all stages of the proceedings. Participating Board members at the first session were Chairman David Rydell, D.O., Joseph R.D. deKay, D.O., John Gaddis, D.O., Marty McIntyre, (public member), Gary Palman, D.O., Scott A. Thomas, D.O., and Kathy W. Walker, L.M.S.W., (public member).<sup>1</sup> Marty McIntyre and Kathy Walker were absent from the second session. Carrie Carney, Ass't. Attorney General, presented the State's case. Dr. Sullivan was present for the first session and represented by Diane Khiel, Esq.<sup>2</sup> James E. Smith, Esq. served as Presiding Officer. There were no conflicts of interest found to disqualify any member of the Board from participating in this proceeding.

State's Exhibits A-J and Respondent's Exhibits 1-3 were admitted into the Record. Subsequent to opening statements, the taking of testimony, submission of exhibits, and the closing arguments, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence regarding the violations alleged in the Complaint.

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<sup>1</sup> Lonnie Lauer, D.O., served as the Board's Case Reporter and did not participate as a Board member in this proceeding although did count as a member for purposes of establishing the quorum.

<sup>2</sup> Attorney Khiel chose to present her closing arguments in writing regarding costs and due process at the March 10 session.

## II.

### FINDINGS OF FACT

Charles W. Sullivan, D.O., 57 years of age, has practiced as an osteopathic physician in the State of Maine for twenty six years. He was the recent subject of a Board Decision and Order effective February 11, 2010. In that decision, which is a part of this record, the Board concluded that Dr. Charles Sullivan violated the provisions of:

“(1) 32 M.R.S. § 2591-A.(2)(B) by demonstrating habitual substance abuse by recording a blood alcohol level of .18% and then operating an automobile. This is made even more serious considering that he has two prior OUI’s and has refused in the past to follow treatment recommendations of the Maine Medical Professionals Health Program and to demonstrate any meaningful initiative to receive treatment for his substance abuse; and  
(2) 32 M.R.S. §2591-A.(2)(F), ‘Unprofessional conduct,’ when he violated ‘a standard of professional behavior that has been established in the practice for which the licensee is licensed.’ The violation occurred when he used his medical examiner’s card in an inappropriate manner in order, most likely, to receive preferential treatment from the {police} officer.”

As a consequence of the above violations, the Board in its February 11, 2010 decision ordered Dr. Sullivan to be evaluated by psychiatrist George Dreher, M.D. Dr. Dreher recommended that Dr. Sullivan sign a contract with the Maine Medical Professionals Health Program (MMPHP). The Board agreed with that recommendation and ordered Dr. Sullivan to sign a contract with the MMPHP by February 18, 2010. Dr. Sullivan was further instructed to immediately thereafter deliver a signed copy to the Board. The Board additionally ordered that the “terms of the contract shall be dictated solely by the MMPHP” while the Board retained “the right to accept, modify, or reject any of the contract’s terms in order to protect the public” and added that “[S]uch action shall override the subject provision(s) of the contract.”

At the December 9, 2010 hearing, Dr. Sullivan’s attitude towards the Board’s concerns was that, in his own words, “I do not have a problem with alcohol.” The fact also became apparent that Dr. Sullivan did not obey the Board’s order to sign a contract with the MMPHP. Dr. Sullivan gave several reasons for non-compliance with the Board’s order such as a lack of trust in the MMPHP. He testified, with support from forensic chemist Stephen Pierce, that urine screenings were less effective in his case than an alcohol interlock device in his car which would not permit him to drive if he had alcohol on his breath. This device, however, was susceptible to being fooled if the driver

had another individual with no alcohol on his/her breath blow into it. Moreover, apparently only alcohol is detected, not other substances. Dr. Sullivan also produced letters from two of his treating physicians, one of whom shared office space with him and was considered a friend. Both of these physicians expressed no immediate concern with Dr. Sullivan's medical practice or his treatment regime which included taking Suboxone primarily for pain and Lorazepam for sleep.

Addiction expert Margaret Palmer, Ph. D., clinical director of the MMPHP, testified that both of the above prescription drugs were most likely inappropriate regarding the treatment of addictions. She stated that Suboxone was a replacement therapy for addicting substances and the medical necessity for Dr. Sullivan to use it had not been demonstrated. She hoped that the MMPHP program could assist Dr. Sullivan in being weaned from the drug within two to five years. Dr. Palmer further testified that, in addition to Dr. Dreher's concerns regarding Lorazepam, that drug may exacerbate addiction, should be used short-term, and is not appropriate for sleep disorders. Moreover, she testified that there were several in-house substance abuse treatment programs that could be potentially affordable to Dr. Sullivan and could result in his abstinence from addicting substances including alcohol. She adopted one of Dr. Dreher's diagnoses which was Axis I alcohol abuse currently in remission.

Dr. Palmer also described her only meeting for an intake interview with Dr. Sullivan which occurred at her MMPHP office on March 2, 2010. At that time, Dr. Sullivan was persuaded to abandon his tape recorder after conferring with his attorney. He voiced his concern that he felt forced to be there. He refused to go to the recommended treatment center and was resistant to the conditions contained in the MMPHP treatment contract, especially regarding the requirement for urine testing and attendance at recommended substance abuse support groups such as Alcoholics Anonymous and Caduceus that employ a 12 step recovery program.

Dr. Sullivan, with support from his wife, testified that he was unable to sign a contract with the MMPHP due to a number of mitigating factors, namely: a) Dr. Palmer did not respond to his questions and concerns regarding her proposed treatment plan, including his statement to her that he could not afford compliance with many of her proposed terms; b) his financial status itself impeded his compliance with a number of the terms of the proposed MMPHP treatment plan; c) his diagnosis with cancer in March 2010 and subsequent surgery and recovery in 2010 created financial and practical obstacles to his signing of a contract with the MMPHP; and d) he was under the impression that the Board was taking over the matter from Dr. Palmer in August 2010 when it

offered him the opportunity to propose conditions that would meet the spirit of the order, especially since Dr. Palmer no longer communicated with him.

In the present case, the Board, by the vote of 5-0, reiterates that Dr. Sullivan's problem with substance abuse remains and mention of that fact is included herein since he specifically denied at this hearing that he has such a problem. Indeed, if substance abuse was not a problem, then it is doubtful that the MMPHP would have recommended that Dr. Sullivan sign a contract with that program. The conclusion regarding substance abuse is further supported by at least the following findings. First, George Dreher, M.D.'s Axis I diagnosis of alcohol abuse currently in remission. Second, the impression of former MMPHP clinical director Dr. Simmons contained in his letter to the Board which received it on November 2, 2009, to-wit: Dr. Sullivan "has complex issues of pain and substance dependence..." Third, the testimony of Margaret Palmer, Ph.D. Fourth, three OUI events, the last one on April 1, 2009. Fifth, the absence of any written report by MMPHP stating that the problem no longer exists.

### **III. CONCLUSIONS OF LAW AND SANCTIONS**

The Board issued an interlocutory decision in this matter on January 13, 2011. The Board at that time, by the vote of 7-0, concluded that Charles Sullivan, D.O. violated 32 M.R.S. Sec. 2591-A.(2)(F) by failing to timely comply with the Board Decision and Order dated February 11, 2010. More specifically, he failed to sign a contract with the MMPHP by February 18, 2010, the terms of which were to be dictated solely by the MMPHP, and to immediately thereafter deliver a signed copy to the Board.

The Board on January 13, 2011 ordered Dr. Sullivan to comply with the preceding order by February 10, 2011, which he has accomplished. The Board retains the right to accept, modify, or reject any of the contract's terms in order to protect the public. Such action shall override the subject provision(s) of the contract.

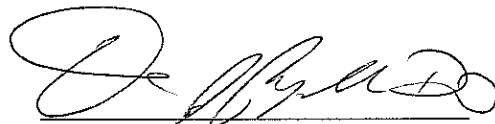
In all other respects, the outstanding sanctions ordered in the February 11, 2010 Board Decision and Order remain in full force and effect except that costs of hearing have been calculated arising from the December 9, 2010 hearing (\$1263.05) and this hearing (\$402.50) and are payable by December 10, 2011. Dr. Sullivan is reminded that he should contact the Board prior to

December 10, 2011 in the event he cannot timely pay the costs. Future costs may also be assessed in the event that Dr. Sullivan requests a transcript of either or both hearings.

The costs are ordered based on the Board's opinion that this matter could have been resolved without the expense caused primarily by Dr. Sullivan's defiance of the Board's authority and his denial that his substance abuse problem requires resolution for the protection of the public. Additionally, the Board is supported by the fees assessed to members of the profession. Accordingly, the Board's practice is to assess the costs in its discretion against those practitioners who violate Board statutes and Rules as opposed to those who are compliant.

**SO ORDERED.**

Dated: March 10, 2011

A handwritten signature in dark ink, appearing to read 'D. Rydell', is written over a horizontal line.

David Rydell, D.O., Chairman

Maine Board of Osteopathic Licensure

**IV.**

**APPEAL RIGHTS**

Pursuant to the provisions of 5 M.R.S. §10051.3 and 10 M.R.S. § 8003, in the event that this interlocutory order is appealable, any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Osteopathic Licensure, all parties to the agency proceedings and the Attorney General.